

1 DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
2 OF THE STATE OF DELAWARE

3

4 RE: Proposed Amendments to the)
5 Artesian Northern Sussex)
6 Regional Water Reclamation)
Facility (ANSRWRF) Construction)
Permit Application)

7

8

9 Milton Public Library
10 121 Union Street
Milton, Delaware 19968

11 Thursday, July 27, 2017
12 6:00 p.m.

13

14 BEFORE: Robert P. Haynes, Esquire
15 Senior Hearing Officer

16

17 -- Transcript of Proceedings --

18

19

20

21

22 WILCOX & FETZER
23 1330 King Street
Wilmington, DE 19801
(302) 655-0477
24 www.wilfet.com

1 MR. HAYNES: Good evening. I
2 apologize for the conditions. It could have been
3 worse. As anybody who was here earlier, we were in
4 a very much smaller room, and I appreciate someone
5 made a phone call and changed.

6 UNIDENTIFIED SPEAKER: Can I ask you
7 to speak up, please?

8 MR. HAYNES: Okay. Yes. We don't
9 have a -- we don't have any microphone.

10 This is the time and the place for a
11 public hearing on the application of Artesian
12 Wastewater Management Inc. to amend the groundwater
13 discharge permit for the Artesian Northern Sussex
14 Regional Water Recharge Facility, affectionately
15 known as ANSRWRF, which you will probably be hearing
16 that as opposed to the long name, in Milton, Sussex
17 County.

18 My name is Robert Haynes. I am the
19 hearing officer that was assigned to preside over
20 this public hearing. And I will be preparing a
21 report of recommendations for the Secretary of the
22 Department, Shawn M. Garvin, who will be making the
23 final decision.

24 Tonight's hearing, a couple ground

1 rules is that if you have an electronic device,
2 please put it on silent. And I'm checking to see if
3 I have done that.

4 If you do get a phone call, I ask
5 that you leave the hearing room before speaking.
6 That's to allow the court reporter, who is to my
7 right, to hear everybody's comments, and not to hear
8 somebody talking on a cell phone.

9 She will be preparing a transcript of
10 tonight's hearing. It will be ready in about two
11 weeks. The Department of Justice says that's a
12 public document available to be released to the
13 public.

14 I will have -- we have a sign in
15 sheet that's going around. We have six people that
16 preregistered, and I appreciate that. And I will
17 have -- the applicant has some representatives here
18 somewhere? Yes. Raise your hand. Okay. One, two.

19 And we have representatives from the
20 Division of Water. That is the Department's program
21 that is reviewing the application will be assisting
22 me in its technical advice and will be basically
23 making a presentation to tell you about the pending
24 application.

1 The Department's position is that we
2 are neutral on the pending application. We want to
3 hear from the public comments before we start
4 formulating our decision.

5 The one change, the one wrinkle to
6 that is the Department, in 2013, approved a permit
7 for the facility. And tonight's hearing is to seek
8 an amendment to that approval. So the Department
9 does defend its action in 2013 in issuing the
10 permit. So and Mr. Hayes is going to -- Dr. Hayes
11 will go into that.

12 With that, I will turn it over to
13 Dr. Hayes, and he will introduce -- have a
14 presentation. And we will develop a certain
15 administrative record of documents from the
16 Department's files and all the public comments that
17 we have received.

18 To the extent I have more public
19 comments back in my computer, those will also be
20 included in the record. Part of my job is to
21 develop a record of decision for the Secretary to
22 assist in his decision.

23 DR. HAYES: Good evening. I'm
24 Dr. Jack Hayes, Environmental Program Manager with

1 the Groundwater Discharges Section. Can everyone
2 hear me okay?

3 UNIDENTIFIED SPEAKER: Yes.

4 DR. HAYES: I'm part of the Division
5 of Water within the Department of Natural Resources
6 and Environmental Control. Some of you may remember
7 Ron Graeber. I'm his replacement.

8 I'm also a Certified Professional
9 Soil Scientist as an Environmental Scientist with
10 the Groundwater Discharges Section.

11 With me is Marlene Baust. She is a
12 Professional Engineer. She is an Environmental
13 Engineer for -- with the Groundwater Discharges
14 Section. She reviews all construction and operation
15 spray irrigation permit applications.

16 We will attempt to answer your
17 questions tonight regarding the amendments to the
18 construction permit. If we are unable to
19 immediately address your question, we will provide
20 you with an answer either by e-mail, phone call, or
21 within a technical response document, as required to
22 be prepared to address all comments received during
23 this public hearing.

24 At this time I would like to place

1 the following exhibits into the record:

2 Exhibit 1, the 2017 permit
3 application and revised design engineering report
4 dated May 5, 2017.

5 Exhibit 2, the notice of the
6 application, dated June 11, 2017.

7 Exhibit 3, the request for the public
8 hearing from Anthony Scarpa, dated June 13, 2017.

9 Exhibit 4, the public notice
10 announcing this hearing, dated July 5, 2017.

11 And Exhibit 5, the public comments
12 received regarding this hearing as far as e-mail
13 correspondence that we received up until this
14 moment.

15 That concludes the exhibits. Now I
16 would like to briefly discuss the proposed
17 amendment -- amended construction permit in the
18 facility.

19 The Artesian Northern Sussex Regional
20 Water Recharge Facility, affectionately known as
21 ANSRWRF, A-N-S-R-W-R-F, was permitted for
22 construction on October 15, 2013.

23 The permittee, Artesian Wastewater
24 Management, Inc., seeks to make the following

1 changes to the current permit.

2 First, constructing two storage
3 lagoons to replace the currently permitted three
4 lagoons. It still has the same, exact capacity. It
5 will just be two lagoons as opposed to three;
6 delaying construction of the wastewater treatment
7 plant and the use of three spray irrigation fields
8 until a later date under the proposed phased
9 construction; and three, receiving treated effluent
10 from the Allen-Harim Harbeson facility that will be
11 treated to the same standards as required by the
12 current permit.

13 This project is being reviewed under
14 the amended 2014 regulations governing the design,
15 installation, and operation of on-site wastewater
16 treatment and disposal systems, which are more
17 stringent than the regulations governing the land
18 treatment waste regulations which were in effect
19 when the 2013 permit was issued.

20 I received comments and questions
21 that I will address to help your understanding of
22 the permit application that is under review and the
23 permit the Department already issued.

24 In 2013 the Department approved a

1 construction permit, and the Department supports
2 that permit in this proceeding. The Department is
3 neutral on the pending permit amendment and welcomes
4 your input on the changes proposed.

5 First, the proposed permit amendment
6 will not change the current permit's requirements.
7 The current permit requires treatment to meet the
8 Department's unlimited public access standards.

9 The unlimited public access standards
10 are the highest we can impose on a facility. It is
11 required for golf courses, parks, ball fields, and
12 other areas where direct human contact may occur.

13 We have many such facilities within
14 the state in which this highly treated wastewater is
15 used to irrigate. Some examples include Bayfront --
16 or Baywood Golf Course, Frog Hollow Golf Course,
17 ball fields in Millsboro, and parkland and farm
18 fields in Middletown.

19 Second, the Department's current
20 permit requires safeguards should the wastewater get
21 out of compliance. This permit amendment proposes
22 to increase safeguards. The Allen-Harim facility
23 will install an automatic diversion mechanism to
24 divert any non-compliant wastewater into a storage

1 lagoon at Harbeson so it would not be sent to
2 ANSRWRF.

3 This provides a better level of
4 protection than in the current permit. The current
5 permit requires additional monitoring wells,
6 lysimeters, and surface water monitoring
7 requirements within each spray field to ensure that
8 any nutrients from the wastewater do not leave the
9 site. These safeguards are evaluated quarterly, if
10 not monthly, to track the concentrations against the
11 background levels that will be obtained prior to the
12 facility being put into operation.

13 Third, the treated wastewater will
14 not have an odor and, as previously mentioned, will
15 be treated to the highest standards of Allen-Harim
16 Harbeson prior to -- (at this time members of the
17 public are laughing and making comments) -- sending
18 it to Milton.

19 Disinfection of the wastewater is
20 required to be performed. Chlorination of the
21 wastewater will take place at Allen-Harim and must
22 maintain a residual amount of chlorine to ensure
23 bacteria and viruses meet acceptable levels.

24 The nutrients, mainly nitrogen and

1 phosphorus, will be uptaken by the agronomic crops
2 planted in the fields and the trees that are in the
3 wooded portions of the project.

4 We have been working with the
5 Department of Agriculture's Nutrient Management
6 Council to ensure the nutrient management plans
7 account for the additional nutrients with the
8 selected crops to be grown.

9 We also require a nitrogen balance to
10 ensure that the nutrients applied can and will be
11 able to be taken up by the crops.

12 Again, our monitoring network of
13 wells, lysimeters, and surface waters will allow us
14 to see if any of these nutrients begin to show any
15 signs of increasing over the lifespan of the
16 facility.

17 The use of the treated wastewater
18 will actually reduce the amount of commercial
19 nitrogen and phosphorous fertilizers needed for the
20 crops and thereby benefit the environment.

21 That concludes my statement.

22 MR. HAYNES: Thank you. Where are we
23 on the sign-in sheets that are circulating?

24 UNIDENTIFIED SPEAKER: Back here.

1 MR. HAYNES: Okay. Do you still got
2 room, or you have used them up? I mean, there is
3 room on the sign-in sheet?

4 I am going to be -- I don't really
5 know how many people have signed in to speak, but I
6 am going to impose a time limit of three minutes per
7 speaker. And the first speaker is Anthony Scarpa
8 who requested the hearing. Are you here?

9 MR. SCARPA: Yes, sir. I'm here.

10 MR. HAYNES: And, hopefully -- I
11 apologize for not having the amplifier. Do you
12 have -- you can do it -- why don't you just stand
13 over there. Then you can project to the audience.

14 UNIDENTIFIED SPEAKER: Shouldn't you
15 use the podium?

16 MR. HAYNES: Oh, okay.

17 UNIDENTIFIED SPEAKER: That would be
18 easier.

19 MR. HAYNES: Sorry. I didn't see it.
20 And she has to hear, because I will be reading what
21 she says as well as listening.

22 MR. SCARPA: Good evening. My name
23 is Anthony Scarpa. I would like to go back and
24 revisit the permit or the meeting that took place

1 here five years ago, because I think it's important
2 for everyone to understand the history of this
3 project and how it's gone from what it was
4 originally proposed as a wastewater treatment plant
5 that would take care of up to 10,000 homes in and
6 around the Milton area to what the applicant is now
7 proposing to change it to.

8 I would like to show you -- and we
9 can enter this as an exhibit if DNREC would like --
10 I would like to show you what was originally
11 proposed. (Holding up document)

12 This is The Villages of -- this was
13 the proposal. This was The Villages of
14 Elizabethtown, which is a 3,700-unit development
15 that was going to take place along Route 30 and
16 Route 16 right outside of Milton.

17 This project was going to have
18 400,000 square feet of retail space and 3,700
19 residential units, including apartments,
20 single-family homes, and townhouses.

21 When the developer, the Lockwoods,
22 proposed this project, they were going to have it
23 annexed into the town of Milton. Milton looked at
24 it, and they were aghast, because this would more

1 than double the size of Milton within a few years.

2 They also wanted to annex, and they
3 wanted to use the Milton sewage treatment plant,
4 which was far too small for this project. So
5 Lockwood purchased the property on Route 30 just
6 north of the Clean Delaware site, and which is just
7 above, right up here on this map, and then proposed
8 to DNREC to build its own sewage treatment plant.

9 I'm not quite sure when Artesian got
10 into the act. But Artesian essentially was a
11 consultant, I believe, for the Lockwoods at the time
12 that they made this proposal. And I have some
13 information about that.

14 But so this, as a background, was how
15 we got to where we are today with this package
16 treatment plant proposal. And the interesting thing
17 about it was that since the last meeting five years
18 ago, really nothing has happened, other than the
19 fact that Artesian now has a tremendous investment
20 in engineering. They purchased the property from
21 Lockwoods for \$5 million, which, coincidentally, is
22 the same amount of money that Artesian diverted from
23 the upgrades at the Allen Harim plant in Harbeson.
24 They were given an eleven-and-a-half-million dollar,

1 low-interest loan, Allen Harim was.

2 And it's the first time a private
3 corporation has ever been given this loan in the
4 State of Delaware. And it's your money. It's
5 taxpayer money. That money went to Allen-Harim to
6 upgrade its sewage treatment plant, because the
7 discharge that was coming out of Allen-Harim's plant
8 from 2012 to 2016 had over 90 violations for the
9 quality of the water that was being discharged.
10 It's the same water that they are proposing to
11 discharge here on us.

12 So, in any event, Allen-Harim put,
13 out of the eleven-and-a-half-million dollars,
14 Allen-Harim put six-and-a-half-million into the
15 upgrades. And then, for whatever reason -- and we
16 are still trying to find this out -- \$5 million was
17 diverted to Artesian, calling it impact fees.

18 I don't know what impact fees would
19 be, because they have nothing built on this
20 facility. They have a driveway that comes in. And
21 they have some pipes laying in the field. But
22 nothing else is really there.

23 So during that five years since this
24 last meeting -- I guess we can lay this down. Thank

1 you. (Folds up and hands document) During the last
2 five years after this meeting, Artesian had been
3 shopping around for customers for this package
4 treatment plant with little luck.

5 They approached Georgetown to take
6 their sewage treatment, their effluent. Georgetown
7 turned them down.

8 Then they approached Rehoboth Beach,
9 because Rehoboth Beach had an issue with discharging
10 out into the ocean outfall. Rehoboth Beach also
11 turned them down.

12 So when Allen-Harim ran into a
13 problem with DNREC and the quality of the water they
14 were discharging from their sewage treatment plant
15 and the neighbors in the Harbeson area up there,
16 Artesian went to Allen-Harim and said, "Hey, guys,
17 we have a solution for your problem. We will pipe
18 your effluent 8 miles north to a facility yet to be
19 built, to a pipeline yet to be installed, and we
20 will take your responsibility away from you."

21 MR. HAYNES: You are going to have to
22 wrap it up pretty soon, sir.

23 MR. SCARPA: Okay. "We will take
24 your responsibility away from you, and we will

1 assume the responsibility for the water that we are
2 now going to be discharging on the fields around
3 your homes."

4 So I have a lot more to say, but I
5 feel that we need to wrap it up.

6 MR. HAYNES: Well, if we get through
7 everybody, we will give you more.

8 MR. SCARPA: Thank you.

9 (Applause)

10 MR. HAYNES: The next person is
11 Andrea Green. Are you here?

12 MS. GREEN: Yes.

13 MR. HAYNES: And to be followed by
14 Paul Reid. Are you here? Paul Reid?

15 MR. REED: Yes.

16 MR. HAYNES: Followed by John Austin
17 after that.

18 MS. GREEN: Good evening. My name is
19 Andrea Green. I am a resident of the Pemberton
20 development here in Milton.

21 UNIDENTIFIED SPEAKER: Louder.

22 MS. GREEN: And I have a rather
23 lengthy statement, but it's -- I will hand up at the
24 conclusion. I will highlight it, and I will hand up

1 the original so that it can be placed in the record.
2 I would like to just highlight the main points that
3 I wanted to make.

4 First of all, when we look at
5 things -- and I will tell you I happen to be a
6 practicing attorney, so I look at things from a
7 legal standpoint -- and that's how I went at this,
8 this issue, this problem.

9 And, first of all, looking at the
10 proposal itself, I looked at some of the
11 attachments, some of the items that were included in
12 the appendix. And they are referred to in the
13 proposal itself.

14 The first item that I noted with
15 problem were the two conditional use permits that
16 were attached to Artesian's amended design
17 development report.

18 At Exhibit D -- I'm sorry, Exhibit
19 B -- are the two conditional use permits issued by
20 Sussex County. Those are conditional use permit
21 1724 and 1725.

22 Those conditional use permits, 1724
23 is for the 74-plus acre property on which Artesian
24 is planning to place the lagoons and eventually a

1 treatment facility. At 1725 is for the spray fields
2 in and around our community.

3 So those are the two conditional use
4 permits. They were granted quite a number of years
5 ago. And if you trace the history carefully of
6 exactly what happened through Sussex County, through
7 planning and zoning, those two conditional use
8 permits have expired. They have expired without any
9 evidence of construction on the site.

10 The only thing done with respect to
11 the conditional use permit 1724 for the 74, 75-acre
12 property, is a driveway. And it's very clear in
13 Sussex County's Planning and Zoning's own records
14 that the conditional use permit had expired.

15 Let's see. Additionally, with
16 respect to those conditional use permits,
17 themselves, even if they hadn't expired, if one
18 takes a look at them, they are so inapplicable to
19 this particular application, it's sort of shocking.

20 The original application and the
21 conditional use permit granted by Sussex County was
22 for a sewage treatment plant. It was for a proposed
23 use that was generally of a public or a semiprivate
24 character. It's desirable and convenient for the

1 community. This is just not what is being proposed
2 here at this point.

3 I have the specific dates on which
4 the -- and excuse me. My statement details the
5 history and the specific dates on which those
6 conditional use permits expire.

7 Additionally, with respect to the
8 wells, wells within 2,500 feet, you find that
9 attached as one of the exhibits or as part of one of
10 the exhibits.

11 The data that is used is extremely
12 outdated. Some of it is over a decade old. On the
13 list of wells in proximity to Field G, the field
14 that's closest to my community, the most recently
15 added well that's on the list was in 2004.

16 My community wasn't even built at
17 that point. My well is not on there, and I would
18 venture to guess that the vast majority of people
19 who are here today, their wells aren't on those
20 lists either.

21 MR. HAYNES: You are going to have to
22 wrap it up.

23 MS. GREEN: I will wrap it up.

24 MR. HAYNES: To the extent she has a

1 lengthy written statement, we will post all the
2 written statements we receive on the Department's
3 website once we -- we will send out -- somehow, we
4 will get that information to the people.

5 MS. GREEN: Okay. And I will just
6 hit a couple of little points --

7 UNIDENTIFIED SPEAKER: Let her talk!

8 UNIDENTIFIED SPEAKER: Yeah!

9 (Public is yelling to let Ms. Green talk.)

10 MS. GREEN: There are some internal
11 inconsistency in some of the documents. The amended
12 DDR states at page ten that phase one of the project
13 will consist of a 90-million gallon lagoon. And it
14 goes on.

15 Yet, in the geotechnical evaluation
16 that is attached to the exhibit at Appendix H, the
17 technical documentation is for a 21-acre,
18 67.5 million-gallon lagoon. Where is the
19 documentation with respect to what Artesian is
20 actually proposing? It's not there.

21 And essentially this is not an
22 amendment of an original proposal; this is something
23 entirely different. This is not a service for
24 homeowners in the area; this is service for one

1 commercial entity, Allen-Harim. It's Allen-Harim
2 taking its problem, it's inability to comply with
3 the wastewater treatment standards, and it's just
4 piping it up the road 8 miles here to Milton.

5 (Applause)

6 (Hands document to Mr. Haynes.)

7 MR. HAYNES: We will mark her written
8 statement as Green Exhibit 1. And, as I say, we
9 will get it posted on the Department's website along
10 with the other documents.

11 Mr. Reid?

12 MR. REID: My name is Paul Reid. And
13 I am the president of the Sunland Ranch Property
14 Owners Association, many of which residents are here
15 tonight, too. So I am speaking on behalf of most of
16 them in order to save time.

17 I would like to ask that if enough
18 people can't say their piece at this public hearing,
19 is there a procedure for another public hearing?

20 MR. HAYNES: Um.

21 (People are yelling yes.)

22 MR. HAYNES: Okay. We will cross
23 that bridge at the end.

24 MR. REED: Okay. All right. So the

1 bottom line here is what we have all recognized is
2 things have changed, not only since 2013, but since
3 all the technical data and surveys and analysis were
4 done that support the application.

5 As the last speaker said, in the case
6 of Sunland Ranch, there is nobody in Sunland Ranch
7 who owns a well. We are all within 2,500 feet of
8 Spray Field C. Nobody is listed in there, because
9 Sunland Ranch didn't have those wells back in 2007
10 or before when that survey was done.

11 So it seems ridiculous to go forward
12 with something that's not even up to date. All
13 right?

14 So let me go forward. All right?

15 Things have changed since the
16 application. On that theme, an example is DNREC
17 redesignated an area behind Sunland Ranch which is
18 what we call Ingram Branch, which is a muddy creek
19 that goes and forms the border of the back of our
20 development as a floodplain, new, in the last year.
21 All right?

22 So we have residents now, if they
23 sell their home or change their situation, they have
24 to pay flood insurance. They didn't when they first

1 bought the house or built the house. So that has
2 all changed.

3 Both sides of Ingram Branch are muddy
4 wetlands. And they are designated wetlands. All
5 right?

6 So the question on the table there
7 is, is it acceptable to be spraying this stuff on
8 designated wetlands or into a floodplain? And our
9 wells, we're talking about people with wells right
10 on the other side of the floodplain -- all right --
11 or actually parts of their property are inside the
12 floodplain now. Okay?

13 All right. So it seems reasonable
14 that a program of this size -- and I read as much of
15 the documentation as I could -- demand some kind of
16 third-party evaluation, expertise, presence to
17 oversee what Allen-Harim and Artesian are saying
18 they self monitor, they self report, and DNREC
19 oversees them. And there doesn't seem to be an
20 outside influence or agency that's paid for an
21 independent opinion.

22 And so we are looking for an
23 independent opinion about the quality to give it
24 some credibility of all the technical aspects of the

1 application. All right?

2 There is a preliminary monitoring
3 plan in section five of the program, and we are
4 looking for more clarification. Basically, we are
5 not looking for Allen-Harim to self monitor and
6 measure.

7 Allen-Harim self monitored and
8 measured and for four years violated any number of
9 times with like 75 violations down in Harbeson. And
10 it wasn't for four years -- it wasn't until the end
11 of four years that DNREC cited them for the
12 violations. This is self monitoring. So you gotta
13 believe self monitoring, the fox is watching the
14 henhouse. (Laughter in public)

15 We don't have any reason to believe
16 otherwise. So the question on the table, then, is
17 four years go by, we have the lagoon, we are
18 spraying stuff everywhere. Four years go by and
19 oops, by the way, we have been violating, and we
20 have already discovered contamination in our wells.

21 So after four years go by and you
22 have contaminated wells, what possible remediation
23 program could you have? It's way too far down the
24 road.

1 UNIDENTIFIED SPEAKER: Public water.

2 MR. SCARPA: Yeah. So I think the
3 essence of the way we feel about it is we don't want
4 to be the next Michigan -- all right -- and find out
5 after the fact that we have poisoned our children or
6 grandchildren. All right? So we are looking for
7 corrective action before the program gets any legs.
8 All right?

9 And I think that's all I have to say.

10 (Applause)

11 MR. HAYNES: Mr. Austin? There you
12 are.

13 MR. AUSTIN: I was fortunate enough
14 to type it out in advance.

15 MR. HAYNES: I will make this Austin
16 Statement Exhibit 1.

17 MR. AUSTIN: I was here five years
18 ago at the last hearing. Um, there are two
19 inconsistencies in what's been said tonight and what
20 I have read in the report.

21 The first one is that the new design
22 report asserts that the permit was issued
23 October 15, 2013 and expires October 14, 2018.
24 That's inconsistent with the Secretary's order. The

1 Secretary's Order 2012-W0052 was issued March 12,
2 2013, not October.

3 Anyway, that means that this existing
4 permit will expire in March 18, not October 2018.
5 For a one-year extension of the current permit, a
6 new well survey is needed and a construction
7 schedule required. This will allow construction
8 until March 2019. After that, a new permit is
9 required.

10 With this application, there is no
11 longer a waste treatment plant; it's a wastewater
12 disposal facility. That was not part of the plan.

13 UNIDENTIFIED SPEAKER: Yep.

14 MR. AUSTIN: Someday there could be
15 units added to the site under this permitting
16 system, but that's going to be in the future and
17 after March 2018.

18 Dr. Hayes, in his opening remarks,
19 said that this regulation is going to be subject to
20 the January 11, 2014 version of the regulations.
21 That is not how this design report reads.

22 The design report, as it's printed,
23 says this facility is going to be subject to
24 10 milligrams (inaudible) nitrogen and 8 milligrams

1 (inaudible) phosphorous in the percolate in the
2 facility. Those are not the regulations that are
3 required by the new regulations for new facility.
4 Those are the regulations that are required of this
5 facility if it was built according to the prior plan
6 and things under the existing construction permit.

7 He is nodding yes, but you are not --

8 DR. HAYES: Well, to clarify, John,
9 the permit is still in effect. So we are not
10 expiring that permit and starting over. It's an
11 amendment to that permit.

12 MR. AUSTIN: Well, I guess my
13 argument is that there is no facility, either for
14 treatment disposal at the site. There is no prior
15 intent to construct a wastewater treatment plant at
16 the site.

17 Construction can't be completed and
18 operation started likely before, A, the permit
19 expires, or an one-year extension to the permit
20 expires.

21 In the Cape Gazette there was a
22 report this facility would take 18 months to
23 construct. As of today, there is pipe at the site,
24 but there is no ground broken. It's very unlikely

1 that this site, if they proceed, if you approve it,
2 that they will be operational by the end of a
3 one-year extension of the permit.

4 So it's really my position that this
5 facility should be subjected to the 2014 version of
6 the regulation and that any additional plans also be
7 subject to that version of the regs, not how the
8 regs existed in 1999. That's how long ago the regs
9 were in effect before they changed them in 2014.

10 Thank you.

11 (Applause)

12 (Ms. Payan approaches Mr. Austin up front,
13 and they have an off-the-record discussion, but it's
14 inaudible to the reporter.)

15 MR. HAYNES: Mark Nauman, to be
16 followed by Caroline Judd.

17 MR. NAUMAN: My name is Mark Nauman.
18 I live in Sunland Ranch.

19 I'm here tonight because I have seen
20 a lot of information thrown around the past few
21 weeks, and it's very unclear what the true intention
22 of this project is.

23 What I do know as fact is that my
24 family gets all of our drinking water from our well,

1 which is 200 feet from the border of Spray Field C
2 but is not listed in the permit document.

3 I know that DNREC's primary objective
4 is to, and I quote, protect public health and
5 safety. DNREC is not responsible to bend political
6 pressure to save an outdated, nonconforming
7 manufacturing facility.

8 DNREC is not obligated to overlook
9 regulations or requirements just to help for-profit
10 utility company address sewage needs of unchecked
11 growth and population. DNREC's only obligation in
12 this matter is to consider the long-term safety and
13 wellbeing of Delaware citizens and our natural
14 resources.

15 The questions I have are
16 wide-ranging, some of which are, are there any
17 third-party engineers or independent monitoring
18 services accounted for in this proposal?

19 What are the affects of this type of
20 system on the surrounding ground and surface water?

21 Who is in charge of monitoring the
22 ground and surface water in the surrounding areas?

23 How large an area around the spray
24 fields is being monitored?

1 How often will surrounding residents
2 be given the monitoring results?

3 And then, most importantly, what
4 corrective action, if any, is taken if private wells
5 are contaminated?

6 My daughter should be able to drink
7 water from our well and enjoy the natural spaces on
8 our property with no threat to their health and
9 safety now and 50 years from now.

10 If this proposed project poses no
11 threat to their safety, then please share the
12 information with us, because right now we have very
13 little real, accurate information to go off of.

14 (Applause)

15 MR. NAUMAN: And Caroline Judd is
16 next. And, Maria, you will be after that.

17 MS. PAYAN: Okay. Right now?

18 MR. HAYNES: No, after. I'm just
19 giving you -- you're in the batter's box. Thank
20 you. I was going to ask where these were. Thank
21 you. Val, you're right. I heard that. (Laughter).

22 MS. PAYAN: I stole your pen.

23 MR. HAYNES: Go ahead.

24 MS. JUDD: Okay. My name is Caroline

1 Judd. I'm also a resident of Sunland Ranch. My
2 property is immediately adjacent to Spray Field C.

3 And I have already submitted a letter
4 that sort of encapsulates a lot of what everybody
5 has already been saying, so it will be documented
6 as part of the public hearing.

7 I guess, just to reiterate, I think
8 that there is a demonstrated history with
9 Allen-Harim and, um, there is a significant history
10 there as it relates to DNREC's -- their findings
11 with code violations. And then this treatment
12 facility taking on Allen-Harim's problems is not for
13 our community to take on.

14 Um, considering the scope of this
15 treatment facility has significantly changed from
16 that residential treatment facility or from that
17 residential community to Allen-Harim, I think that
18 it shouldn't be treated as an amendment, which other
19 people have already stated. And it should be
20 resubmitted as an original application.

21 I also think it's important that a
22 third-party vendor is included to do the
23 environmental assessment, and it should be a full
24 environmental impact statement and not just an

1 internal statement that's done by the people who
2 have their financial risks involved in it.

3 I also think it's important that the
4 environmental impact assessment takes into account
5 all the wells that are in our community, as they are
6 not currently in there.

7 (People in public are asking her to speak
8 up.)

9 MS. JUDD: Sorry. I'm not a public
10 speaker. Okay?

11 UNIDENTIFIED SPEAKER: Me neither.

12 MS. JUDD: Overall, what I really
13 wanted to say is I'm here for my daughter. She is
14 two years old. And 30 years from now I want to be
15 able to be in a position to give her some kind of
16 financial stability. And that may come in the form
17 of this property.

18 And I have grave concerns what the
19 property valuation is going to be like in 30 years
20 and what the water quality is going to be like in 30
21 years.

22 And the one thing I really want to
23 bring up that nobody else has brought up is Bowers
24 Beach. That facility that contaminated Bowers Beach

1 was built, I believe, in the sixties or seventies
2 with their impact assessment that encapsulated 30 or
3 40 years down the road and what the impact would be
4 for future generations.

5 So I want my daughter to have safe
6 drinking water down the road and not have to worry
7 about an issue like Bowers Beach that we are
8 currently dealing with.

9 (Applause)

10 MS. PAYAN: Hi. My name is Maria
11 Payan. I am with a non-profit, Socially Responsible
12 Agricultural Project. And the community, as you can
13 see, has been working extremely hard the past week
14 to go through all of the data and really tackle it.

15 The state should be doing an entirely
16 new application for the project. Firstly, the
17 conditional use associated for the project has
18 expired. Even the Planning Commission has confirmed
19 that from Sussex County.

20 It cannot issue a permit not in
21 compliance with local zoning. The State cannot do
22 that. This includes the housing development
23 as well as the spray fields, the wastewater. They
24 have all expired. The permit is misrepresented.

1 The construction permit issued for Artesian in
2 October of 2013 is for a treatment plant for 3,700
3 homes to benefit the public, which was never built,
4 not the homes or the treatment facility.

5 The construction permit application
6 with amended design is for the sole purpose of
7 taking an industrial waste stream from the Harim
8 Harbeson poultry processing facility. This should
9 not be an amended design with a new construction
10 application, but an entirely new permit application.

11 (People in audience saying yes and
12 uh-huh.)

13 MS. PAYAN: The FEMA maps have
14 changed since the initial application. The fields
15 to apply the wastewater are sand, sand, and more
16 sand with a high water table next to wetlands,
17 tributaries, sloped fields, and many private well
18 owners within the actual mapping area, yet not
19 listed on the maps, because they were done over 11
20 years ago.

21 Most of the developments here today
22 were not even built then. They are not on the
23 reports, and the public health and safety are being
24 jeopardized with bringing in this wastewater, which

1 has proved over and over again cannot meet the
2 standards.

3 There have been over 90 overages
4 since 2012 without a single fine or discharge of
5 their NPDES permit.

6 I don't see Material Data Safety
7 Sheets for the chemicals used in the permit, this
8 application; nor, by the way, do I see enterococcus
9 being monitored anywhere in there coming onto the
10 proposed side.

11 This is specific to a poultry
12 processing plant. It's not a human waste. That
13 should be included in there. That's very serious
14 with the bacteria, and the State knows how serious
15 that is.

16 I question if it's even legal with
17 the loan terms to transfer \$5 million out of an
18 \$11 million loan that was supposed to bring Harim
19 Harbeson into compliance with upgrades to their
20 wastewater facility and a water reuse system and
21 have it used as now an impact fee for Artesian.

22 By the way, I did request
23 documentation yesterday regarding the impact fee and
24 the change of scope to the loan. Neither was given

1 to me before tonight.

2 At the very least, an environmental
3 impact study and entirely new project application
4 needs to be done. A public health impact study
5 should be done.

6 And I can't understand why this loan,
7 which required initially an environmental assessment
8 at the project site to be transferred without any
9 kind of environmental assessment 8 miles from the
10 location the loan was given.

11 This public conveyance was requested
12 by five parcel owners. Guess what? They all belong
13 to Harim LLC.

14 (Laughter and applause in audience)

15 MS. PAYAN: They all belong to Harim
16 LLC. Harim requested that this be a public
17 conveyance. Yes. That wasn't mentioned. But we
18 looked it up.

19 This conveyance was -- okay -- this
20 will not benefit the public but threaten their
21 wells, health, and property values. One entity only
22 will benefit, which is Harim, by removing any
23 accountability for their pollution, as Artesian will
24 now be responsible for the slaughterhouse waste

1 treatment.

2 This proposal for this lagoon is the
3 equivalent of putting 90,000 septic tanks on
4 21 acres. 90,000 septic tanks on 21 acres. Think
5 about that.

6 Beaver Dam Creek cannot withstand the
7 overages, nor can Prime Hook, the National Wildlife
8 Preserve, nor Delaware's overloaded phosphorous
9 fields in the spray field sites on the application,
10 nor the private well owners near the project, or
11 Delaware's waters.

12 You must deny this permit, and I
13 suggest if the State and Sussex County wants to
14 allow any increases in production with Harim, then
15 Harim should be taking care of their waste at their
16 costs. It should not be thrown on the public's back
17 while removing harm of any accountability.

18 Just out of curiosity, what rate will
19 Harim be paying to Artesian?

20 MR. HAYNES: We will get you that
21 answer.

22 MS. PAYAN: I'm sorry?

23 MR. HAYNES: We will get you that
24 answer.

1 MS. PAYAN: Really? I'm counting on
2 it. In conclusion -- because they wouldn't give us
3 that answer for the domestic wastewater. I was at
4 their community, too.

5 MR. HAYNES: It should be a public
6 utilities --

7 MS. PAYAN: Because they called me,
8 as well.

9 MR. HAYNES: It should be Public
10 Service Commission.

11 MS. PAYAN: Just a couple more.

12 MR. HAYNES: Okay.

13 MS. PAYAN: Good environmental policy
14 is always good economic policy. While this industry
15 adds much to the local economy, so does the tourism
16 industry.

17 Delaware has been blessed here with
18 beautiful natural resources. It is our duty to be
19 stewards of these treasures which bring tourism and
20 recreation dollars to the economy, as well.

21 The state's waters are now 88 percent
22 unswimmable, 93 percent don't support aquatic life.
23 There is a reason for the embarrassing water quality
24 in this state.

1 We will never restore it with the
2 business-as-usual attitude that reflects poor
3 leadership and decision making. Throwing money at a
4 problem without addressing the core issues will
5 never, ever fix it.

6 We cannot continue to be shortsighted
7 and allow our children and our grandchildren to pay
8 with their poor health and huge environmental
9 cleanup costs.

10 Delaware has been trying to pass a
11 clean water tax -- right? -- onto families to try to
12 improve the water quality. Beaches are closed each
13 year due to high bacteria levels. Revenue is lost.

14 We need to put things where they make
15 sense and hold polluters accountable for their
16 waste. Taxing people to death while appeasing
17 special interests is not a good plan or solution.
18 We are smarter than this.

19 Public servants and the agencies
20 responsible for permitting and enforcement of
21 permits need to put the people of Milton, Sussex
22 County, and the state above special interests.

23 Deny this application for this
24 industrial waste facility. This needs to be a new

1 permit, not a fantasy treatment plant with lagoons
2 and spray fields for Allen-Harim. They need to pay
3 for their own waste treatment without jeopardizing
4 the health and wellbeing of Delaware families
5 breathing spray fields of ammonia and nitrates and
6 the bacteria seeping into their wells and streams.

7 Thank you for the opportunity to
8 comment.

9 (Applause, hollering, standing ovation)

10 MR. HAYNES: Thank you. Is everybody
11 signed in tonight that's here?

12 UNIDENTIFIED SPEAKER: Yes.

13 MR. HAYNES: Okay. We do have extra
14 sign-in sheets. And, unfortunately, I had some left
15 over from another hearing that was held a couple
16 weeks ago. So you are not signing in for a marina
17 permit. We're making sure that you are going to be
18 the groundwater discharge permit. That hearing had
19 nobody show up for it.

20 MR. SCARPA: Lucky you.

21 MR. HAYNES: Sarah Cooksey. And
22 basically, given like from one of the sign-in
23 sheets, we will definitely have the time
24 restrictions enforced. So I let her go awhile

1 longer.

2 MS. COOKSEY: Good evening. My name
3 is Sarah Cooksey. I am the Director of Conservation
4 for the Nature Conservancy.

5 For those of you who do not know what
6 the Nature Conservancy is, we are the largest
7 not-for-profit conservation organization in the
8 world.

9 The proposed facility, including the
10 lagoon and several of the spray sites, are directly
11 adjacent to our Pemberton Forest Preserve, which is
12 one of our largest preserves. It's over
13 1,300 acres.

14 UNIDENTIFIED SPEAKER: Can you speak
15 up, please?

16 MS. COOKSEY: This preserve protects
17 numerous habitat types, including several upland
18 forests, Atlantic White Cedar swamps, emergent
19 wetlands, wooded wetlands, and several other wetland
20 types.

21 The Pemberton Preserve provides
22 refuge for more than 40 rare plants and animals,
23 including the only occurrence of the Curly Grass
24 Fern in Delaware.

1 The tract also possesses some of the
2 highest-quality Atlantic White Cedar swamps in the
3 state, as well as a significant amount of upland
4 forest.

5 Further, it is home to the federally
6 protected wetland plant that is referred to as the
7 Swamp Pink.

8 I respectfully request that the
9 record be kept open for a minimum of 15 days so that
10 we may have more time to review the application and
11 submit written comments. Thank you.

12 (Applause)

13 MR. HAYNES: Does the Division of
14 Water have any comment on that request?

15 DR. HAYES: We will open it up.

16 MR. HAYNES: Okay. And the
17 applicant?

18 UNIDENTIFIED SPEAKER: No. We're
19 fine with that.

20 MR. HAYNES: Oh, you're fine with it?
21 You're okay with it. All right. Yeah. That will
22 be adopted, accepted as for the extension of the
23 public comment period.

24 UNIDENTIFIED SPEAKER: Thank you.

1 MR. HAYNES: And when is that showing
2 up? Has anybody calculated that yet? We won't get
3 the transcript for a couple of weeks anyway.

4 DR. HAYES: The 11th.

5 MR. HAYNES: The 11th. That's a
6 Friday; right? So on the 11th at 4:30, e-mailed to
7 me.

8 And the next person who signed --
9 well, a lot of people had question marks, so I don't
10 know, and I pretty much presume that's a no unless
11 you want to speak. I will let the people that
12 affirmatively want to speak go first.

13 It will be Cathie Nagy. Are you
14 here? Kathy Nagy. Okay. Based on the sign-in
15 sheet, there is approximately 100 people here
16 tonight.

17 MS. NAGY: Basically, my words are
18 formulated on the little information that I have
19 received as of recently, so I think I'm probably in
20 the same realm as most of you.

21 I am here to voice my opinion for the
22 protection and the quality of land, water, and life
23 by not supporting this plan. I expected our county
24 and state representatives, including DNREC, would

1 have been working for the people and the wildlife
2 and not for coverup by business who has a proven
3 track record that violates the environment.

4 We need to protect and not complete
5 our land, nor can we be arrogant enough to ruin our
6 water. I am a well owner who does not want to tie
7 into Artesian or any other company who is offering
8 water and sewer style hookups.

9 Again, this same arrogant plant,
10 Allen, pushes onto others their agenda and their
11 greed to force innocent homes and business owners a
12 solution to a very unacceptable mess caused by Allen
13 and being shipped to the town next door.

14 The money spent for specs and
15 drawings way before the Town of Milton had a chance
16 to consider this project and the huge structure on
17 the main tourist-traveled road was irresponsible and
18 could only be perceived as backdoor politics and bad
19 business by our state and county department who
20 watched and passed through this unacceptable mess.

21 Your lagoon is not blue and
22 surrounded by palm trees. (Laughter in audience)
23 This spray could ruin our wells and kill and chase
24 away valuable wildlife and upset the natural

1 progression of our way of life. People, animals,
2 sea life, birds, and bugs are all fed and hydrated
3 by this natural evolution and have been for years
4 before all of us.

5 It seems people have decided that
6 this unproven project and poorly managed company
7 seem to have the rights to proceed, and the rest of
8 us have none.

9 Why is it on important, life-changing
10 or environmental issues these things do not make it
11 to the ballot? The conscientious -- the consensus
12 from those I spoke with is simply this: If it
13 smells like greed and tastes like greed, well, it's
14 possibly greed.

15 (Applause)

16 MS. NAGY: We cannot get this far
17 with violations and county approvals without greed
18 and corruption being considered as a motive for how
19 quickly this plan moved through the process,
20 especially with a proven violator.

21 Why hasn't Allen been held
22 accountable for all of this?

23 (People in public saying yes.)

24 MS. NAGY: I hope our county

1 officials are listening to the people. They were
2 elected to protect and serve the people, their
3 towns, and yes, even business.

4 And now when we really -- when we
5 rally to speak, we need to know they are really
6 listening. My vote, although you never gave me the
7 chance, is no.

8 We need to, one, enforce the cleanup
9 of their violations and payment of fines before any
10 new growth or expansion can be granted; two, take
11 this off the books until all parties concerned have
12 a fair chance to get the facts and voice their
13 opinions; and, three, the newly elected officers who
14 work within our communities put fair voting on the
15 polls before major decisions are made.

16 I can only hope these voices reach
17 out to so many more of our neighbors who would agree
18 with the local towns involved in this mess feel
19 betrayed by our representatives. Allen's failure
20 over the years is DNREC's failure leading to much
21 distrust. Thank you.

22 (Applause)

23 MR. HAYNES: Is there anybody else
24 who has signed up to speak that I did not call?

1 MR. CHATLEY: John Chatley.

2 MR. HAYNES: Come on up. I'm sorry.
3 You were actually signed up early. Sorry. My
4 apologies.

5 MR. CHATLEY: That's all right. I'm
6 a rather straightforward and try to be a likable
7 person. Um, when Tony Scarpa -- I'm also a
8 Pemberton resident, by the way -- Tony Scarpa
9 mentioned to me had I seen the June 2 edition of the
10 Cape Gazette regarding Allen-Harim. And I said no.
11 So I got one, and I read it.

12 And what immediately struck me was --
13 I don't know how many of you have seen this. This
14 is the article (Holding up). It's on Page 18.
15 Okay? When I see something -- and I have a
16 background in government. When I see something on
17 Page 18, I'm immediately suspect. (Laughter in
18 public)

19 And then it goes to Page 19. And the
20 thing that struck me on Page 19, which there is one
21 paragraph toward the end of the article, by the way,
22 that reads, "Runoff from other areas of the plant,"
23 such as loading docks and surrounding the awful
24 brick building where chicken guts, blood and

1 feathers are processed for disposal, "is collected
2 and treated on site with a poultry processing
3 wastewater which will go to the ANSRWRF for
4 disposal." All right?

5 So that's what we are talking about.

6 Now, I have two points to make: Number one, there
7 is a letter dated November 3, 2016. This is the
8 letter that other speakers tonight have spoken about
9 that lists -- I don't know, I lost count at 60.
10 There is five pages of violations, citations, as
11 they call it, violations. And it mentions fines.
12 This is November of '16.

13 Has DNREC pressed the fine issue?
14 Have you collected any fines from any of these
15 violations?

16 DR. HAYES: We are still pending
17 enforcement on those.

18 (Loud laughter in audience)

19 MR. CHATLEY: That's not an answer.
20 That's a dodge -- that's a CYA.

21 DR. HAYES: It's not my program, so .
22 . .

23 MR. CHATLEY: I don't care who it is,
24 but somebody has to be responsible for it.

1 DR. HAYES: It is pending at this
2 point in time.

3 MR. CHATLEY: Oh, all right. Well,
4 then, would you look into it and get back to us in
5 the next two weeks?

6 MS. PAYAN: They got back to us.
7 They said by their FOIA records they can't tell us
8 because it's pending.

9 MR. CHATLEY: Yeah. That's what they
10 say in Washington.

11 MS. PAYAN: You can't know.

12 MR. CHATLEY: All right.

13 (Laughter in public)

14 MR. CHATLEY: The next question is a
15 little more easy for all of us to understand.
16 Allen-Harim apparently -- and I'm not a scientist --
17 but with all these violations cannot meet the level
18 of treatment on their effluent that DNREC requires.
19 Would that be a fair statement?

20 DR. HAYES: No.

21 MR. CHATLEY: No? We are in trouble,
22 folks!

23 (Loud laughter in audience.)

24 MR. CHATLEY: So here again it's

1 the --

2 MR. HAYNES: The Department issues
3 permits that it intends the permittee to comply
4 with. If it doesn't, there is enforcement
5 possibilities. But, yes, we issue the permits that
6 we intend to have them comply.

7 MR. CHATLEY: But --

8 DR. HAYES: You have got to realize,
9 too, sir, there are thousands and thousands of --

10 UNIDENTIFIED SPEAKER: We can't hear.

11 MR. CHATLEY: I don't care about the
12 other thousands and thousands. That's what
13 computers are for. That's when you press search and
14 something comes up.

15 Here's five pages of citations
16 spanning four years that you are still
17 investigating, and not one dime has been assessed
18 nor collected.

19 (Long applause)

20 MR. CHATLEY: Now, it's our money.
21 It's your money. Everybody in here, it's our money
22 that you are talking about. And I sort of get a
23 little testy at my age when people start not
24 collecting to help us, all of us. All right? Now

1 --

2 MR. HAYNES: Yeah, that is not -- the
3 Department has different programs. This is a
4 surface water. You understand that.

5 MR. CHATLEY: It's still DNREC.

6 MR. HAYNES: You are correct, but --

7 MR. CHATLEY: So then somebody should
8 have been here, because this letter was put out.
9 Somebody should have been here from DNREC that could
10 address these issues. And if you didn't expect
11 these to come up, then you shouldn't have, you know,
12 (loud applause while speaking) then cancel the
13 hearing. It doesn't make sense. It's not logical.

14 DR. HAYES: Tonight's hearing is
15 about the ANSRWRF project.

16 MR. CHATLEY: I understand. And
17 everybody else has spoken about that. But this is
18 all one big --

19 DR. HAYES: Not tonight it's not.

20 MR. CHATLEY: This is all one big
21 package, and we're all in this together, us and you.
22 All right. Now --

23 MR. HAYNES: I mean, I was involved
24 in a permitting program, and Maria was involved in

1 that, as well, for the upgrades to the Allen-Harim
2 plant. So I'm familiar somewhat with it.

3 MR. CHATLEY: Yeah.

4 MR. HAYNES: And that is part of the,
5 you know, the loan that she referenced as part of
6 the upgrades.

7 MR. CHATLEY: Yeah.

8 MR. HAYNES: So I have some knowledge
9 about it. But we are here to hear from you, and --

10 MR. CHATLEY: Yes.

11 MR. HAYNES: -- then we will, you
12 know.

13 MR. CHATLEY: Yes. That's what a
14 hearing is all about. Okay? And, I mean, at a
15 hearing -- and you have been around the horn
16 enough -- you know what happens at hearings. The
17 fact that you didn't have anybody to show up at your
18 last hearing is great. You know, they are the great
19 kind of hearings. I love those hearings.

20 But this is different. Now, in
21 closing I will only make one statement: Allen-Harim
22 has all kinds of violations which are still being
23 investigated.

24 But, I mean, there is five pages of

1 them here dating over four years. And this is only
2 November 16. So I find it very difficult to believe
3 that there hasn't been an amendment to this letter
4 and a few more citations now and then.

5 MR. HAYNES: You may be correct. But
6 I am not in a position to answer that. So would you
7 like me to get an answer to you.

8 MR. CHATLEY: I just said there may
9 be.

10 MR. HAYNES: Okay.

11 MS. GREEN: Yes.

12 MR. CHATLEY: I'm leaving the door
13 open for somebody to say --

14 UNIDENTIFIED SPEAKER: Yes, we want
15 an answer for the record!

16 MR. CHATLEY: Now, so the logic that
17 doesn't make sense is that Allen-Harim has been
18 land-blasted the past three or four years that I
19 know of because the effluent that's being pumped
20 into Beaver Dam Creek doesn't comply with your
21 standards or someone's standards. And they have
22 upgraded the plant.

23 If they are not able to make the
24 compliant -- if they are not able to bring their

1 effluent into compliance now with the 7 million that
2 they just spent that you gave them, (laughter in
3 audience) our money, and, you know, is it going to
4 be the same thing?

5 Because if they are treating it the
6 way it should be treated, and the effluent meets the
7 standards that you set, then why in the hell would
8 somebody spend \$17 or \$19 million to put all that
9 pipe in to take it up the road to spray it into a
10 field? (Loud, long applause) They could easily
11 (loud, long applause) they could just as easily pump
12 it into Beaver Dam Creek, and everybody would be
13 happy.

14 UNIDENTIFIED SPEAKER: They didn't
15 want it there, so now it's our problem.

16 MR. CHATLEY: Yeah. There is
17 something wrong with -- there is a piece missing of
18 the series of dots or the equation, whatever analogy
19 you want to make.

20 It's got to really be searched out
21 and looked into, because it doesn't make sense for
22 Artesian -- they are a profit-making entity -- to
23 take this on. And I know a little bit about
24 sewers -- to take this on with one customer.

1 UNIDENTIFIED SPEAKER: Yep.

2 MR. CHATLEY: And you would go
3 bankrupt in two weeks or two months. And they have
4 no customer base anymore. Okay. That's it.

5 (Applause)

6 MR. HAYNES: Does anybody else want
7 to speak?

8 (People raising hands)

9 MR. HAYNES: Yes.

10 MS. JONES: My name is Gwendolyn
11 Jones. I live here in Milton. And, of course, I
12 get my water --

13 UNIDENTIFIED SPEAKER: We can't hear
14 you.

15 MS. JONES: My name is Gwendolyn
16 Jones. I live here in Milton. I really don't have
17 a dog in the fight, because I get my water and
18 sewage commuted by the town or through Tidewater, I
19 think it is.

20 But my concern is for the people with
21 the wells in this area. If everything works
22 right -- and insofar it doesn't sound like it has
23 been through all the permitting and all the
24 details -- if everything works right and done

1 properly, there may or may not be an issue.

2 But my concern is it doesn't sound to
3 me like things have been working right or there is a
4 high likelihood, considering the violations of
5 Allen-Harim's plant, if things don't work right,
6 then all of a sudden everybody who is on wells and
7 septic tanks now are all of a sudden now going to be
8 required to hook up to some kind of public water
9 system and sewer system.

10 UNIDENTIFIED SPEAKER: Exactly!

11 MS. JONES: And, of course, Artesian
12 is there.

13 UNIDENTIFIED SPEAKER: Of course!

14 MS. JONES: To pick up the pieces at
15 your expense.

16 UNIDENTIFIED SPEAKER: Oh, yes, of
17 course!

18 MS. JONES: So that is my concern in
19 that regard. Thank you very much.

20 (Applause)

21 MR. HAYNES: Striped shirt in the
22 back.

23 UNIDENTIFIED SPEAKER: Can he speak
24 from here?

1 MR. HAYNES: I prefer you to come
2 close to the court reporter. Are you able to do
3 that?

4 THE REPORTER: Unless he can talk
5 really loud.

6 MS. PAYAN: Can you talk really loud?
7 And then you don't have to come up.

8 (A woman and man approach the front of the
9 room.)

10 MR. HAYNES: That's fine for me. Can
11 you hear?

12 THE REPORTER: Yes.

13 MR. FRYER: I'm blind, and I live in
14 Sylvan Acres.

15 MR. HAYNES: What's your name?

16 MR. FRYER: John Fryer, F-R-Y-E-R.
17 Some of the proposed fields are uphill from our
18 development. We, after a real heavy rain, we sweep
19 up the streets and our yards. We are sweeping up
20 the waste from some of the future proposed fields.

21 I talked to Mr. Graves at the last
22 meeting. And, by the way, the last meeting, I don't
23 think anybody there was in favor of this. I don't
24 know how it got -- well, politics, I guess.

1 Anyway, we have -- we used to have a
2 resident in our development who was fairly high up
3 in DNREC. He was a scientist. He specialized in
4 this kind of thing. He didn't like to talk about it
5 when we come to a meeting, because it jeopardized
6 his position.

7 But about two months ago he moved out
8 of the neighborhood. (Laughter in public) Okay? I
9 don't think he likes this. And he is one of the
10 knowledgeable people that makes a living studying
11 these things. Okay?

12 Anyway, I talked to Mr. Graves at the
13 last meeting and asked him, when you create all the
14 hormones and chemicals, birth control -- by the way,
15 chickens have a lot of hormones in them -- you
16 concentrate that, and then you spray it on the
17 fields, what happens to it? It's there forever.

18 Eventually, it's going to get into
19 the wells. It might not be this month or next year,
20 but eventually it's going to work its way down into
21 the wells. Okay?

22 Now, we know surface water on these
23 spray fields gets into our neighborhood. I'm
24 assuming that eventually -- we have a pretty deep

1 well. I don't have a lot of really bad fears. But
2 eventually that's going to get down 80 feet to my
3 well.

4 So that's about it. I just would
5 like to go on public record that I'm really against
6 this. And also up the street, up Route 1 from us,
7 is Mr. Blessing has a recycle place.

8 UNIDENTIFIED SPEAKER: God, another
9 one!

10 MR. FRYER: DNREC controls him. He
11 just does anything he wants. (Loud, long applause)
12 He violates every day of the year. He is still in
13 business. For that reason, I don't have a lot of
14 faith that DNREC is going to protect us. (Loud,
15 long applause, and hollering)

16 MR. HAYNES: Anybody else like to
17 make a statement?

18 UNIDENTIFIED SPEAKER: Can we grant
19 some time back to the original speaker who didn't
20 have enough time?

21 MR. HAYNES: Yes. Mr. Scarpa?

22 (Applause)

23 MR. SCARPA: I have some additional
24 comments and questions. In your document and in the

1 documents related to the approval, it talks about
2 the Artesian Public Service Commission approved and
3 regulated service area.

4 Could you tell me, because we could
5 not find any information on the DNREC website, what
6 is the scope and the extent of the Artesian service
7 area? Does it extend all the way down to Harbeson,
8 or is it just supposed to be in northwestern Sussex
9 County as the original proposal was with the sewage
10 treatment plant with the service adjusted?

11 MR. HAYNES: We wouldn't have that
12 information tonight. We can get it to you.

13 DR. HAYES: They have areas across
14 the entire state. It's not just --

15 MR. SCARPA: Well, I understand. But
16 for this particular facility, there has to be a
17 service area, a scope so they are not conflicting
18 with other service providers.

19 DR. HAYES: Right.

20 MR. SCARPA: So we would like to know
21 whether or not the Harbeson area, in particular, is
22 in their service area or is it --

23 MR. HAYNES: Well, they are piping it
24 up, so, I mean, it could be. I mean, I'm not going

1 to go into that, whether it's delivery into the
2 Milton area or not. But I will get you an answer.

3 MR. SCARPA: Okay.

4 MR. HAYNES: I understand what you
5 are saying.

6 MR. SCARPA: Basically what that
7 means, then, if they have got no restrictions on
8 piping, they could take Perdue's chicken wastewater,
9 they could take any other poultry processing
10 wastewater, industrial wastewater, and pipe it up to
11 this facility.

12 Because the spray fields that are
13 being utilized for this first phase is only part of
14 the 1,700 acres that's under a lease agreement,
15 which we feel is expired, with the Isaacs family.

16 So there is three entities here.
17 There is Artesian, Allen-Harim, and the Isaacs.
18 There is a financial web here that no one has been
19 able to untangle or get any financial information.

20 How much is Allen-Harim paying
21 Artesian to take the wastewater? How much is
22 Artesian paying the Isaac family for the leases on
23 their farmland? So three very wealthy entities are
24 what we are talking about right here tonight.

1 Allen-Harim pumps between one and a
2 half and 2 million gallons day out of the aquifer,
3 far more than any of the farmers in this section of
4 Sussex County pull out.

5 Yet, in the report there was some
6 concern and some comments about -- and I'm going --
7 when I say report, this was a 2013 hearing or 2012
8 hearing, and the Secretary's Order Number 2012 that
9 actually approved this facility back in 2013.

10 There were comments in here related
11 to how much energy farmers used to operate their
12 pumps and how much water they used to spray on their
13 fields.

14 Well, it's nothing in comparison to
15 what this proposal is saying. If this entity -- if
16 this spray lagoon goes forward, you are going to
17 have aerators running 24 hours a day. You are going
18 to have pumps that they are building relay stations,
19 basically called pump stations, from the Allen-Harim
20 plant in Harbeson up to this facility, because there
21 is not enough velocity to get the wastewater from
22 the Allen-Harim plant eight miles up to this
23 facility without a relay system. So we'll take it
24 to a pump station, increase the velocity, pump it up

1 to the next pump station, and then up to this
2 facility.

3 So what does it cost to run all of
4 that? What does it cost to install all of that?
5 And John Chatley very wisely brought up the point if
6 they are spending all this money to build this
7 infrastructure and they transfer \$5 million of the
8 money that was supposed to go toward the sewer plant
9 upgrades -- and that was also money that was going
10 to be used for a reuse treatment program where they
11 would take some of the wastewater in the Allen-Harim
12 plant and clarify it and be able to reuse it in some
13 aspect of their business -- why are they doing all
14 of this? It just makes no financial sense.

15 And DNREC's charge is to do this as
16 economically as possible for the state. I mean,
17 they are supposed to look at the economics of a
18 project. They are supposed to look at all the
19 aspects of a project.

20 And when you look at the costs
21 associated with building all of that infrastructure
22 versus what it would cost just to make sure that the
23 effluent coming out of the Allen-Harim plant meets
24 the standards set by DNREC, it just doesn't compute.

1 There is something wrong here.

2 And as far as the violations were
3 concerned, there were over 90 violations of treated
4 effluent coming out of the Allen-Harim plant. When
5 we did a FOIA request to the Secretary of DNREC to
6 find out what was happening and why, you know, were
7 there any fines issued, what was going on, we were
8 told it was under investigation.

9 Now, mind you, this is from 2012. It
10 took less time for the Gotti crime family to get
11 indicted and spend time in jail than it does for
12 DNREC to investigate these violations.

13 (Laughter)

14 MR. SCARPA: The report also keeps
15 talking about the high rate of treatment that was
16 going to take place at the Artesian facility. There
17 is something that was referred to by the hearing
18 officer in the conclusions and recommendations, the
19 last page of this report.

20 It keeps referring to something
21 called a particular type of filter that was going to
22 be used in the system. The filter was a -- I will
23 find it here -- a membrane bioreactor or MBR
24 process.

1 And it goes on to say it's an
2 extremely efficient combination of a well-proven
3 biological treatment process that biodegrades
4 organic matter in a membrane-based, solid liquid
5 separation process. This combination delivers
6 treated water with vastly reduced levels of
7 bio-chemical oxygen demand (BOD) and chemical oxygen
8 demand, an almost the complete removal of suspended
9 solids.

10 That's what we were promised in the
11 Artesian plant. You are not getting it at
12 Allen-Harim. I can tell you that. Because we
13 looked at their -- what their upgrades were to the
14 spend of this \$6.5 million in upgrades. It's not
15 there.

16 And, by the way, after those upgrades
17 were completed in November, they were still getting
18 violations from DNREC for water quality discharge.
19 So that's after the fact. And I have newspaper
20 articles to show you if you doubt that and also the
21 report.

22 So, really, it's like what are we
23 looking at here? We are looking at a corporation.
24 We are looking at two corporations, one that's

1 trying to save a facility that they probably have \$7
2 or \$8 million invested in up the road here right
3 now, and we are looking at corporation that doesn't
4 want their publicity any longer.

5 By the way, Harim is a South Korean
6 multibillion-dollar conglomerate in South Korea.
7 Why do they need our 11 and a half million dollars?
8 Ask yourself that question. And why can't they, if
9 they really want to treat effluent correctly, why
10 can't they just build an offsite sewage treatment
11 plant way out where no one lives and treat it --
12 send it there and treat it there?

13 Why do they have to send it here with
14 all of these residents, with all of our wells, and
15 with all of our children, who I'm really concerned
16 about also. Because children and the elderly are
17 much more susceptible to this type of pollution than
18 the average healthy adult is.

19 So, also, I think Maria had some
20 statistics on how much these spray fields will
21 degrade the value of your properties. What was the
22 number, Maria?

23 MS. PAYAN: Let me see if I can find
24 it.

1 MR. SCARPA: It was staggering,
2 staggering.

3 MS. PAYAN: It is. It was from
4 actually the University of Missouri, and it was near
5 poultry operations, including processing plants, the
6 housing, that sprayed any kind of the industrial.

7 And it went up to -- what did I tell
8 you -- a tenth of a mile, if you lived within a
9 tenth of a mile, it could go up to 88 percent
10 decrease in your property values. Three miles.

11 MR. SCARPA: Just as a background --
12 yeah, it just keeps --

13 MS. PAYAN: And there is many, many,
14 many studies about property values -- I can tell
15 you, because I'm in this all the time. And they
16 vary. But I will tell you that 99 percent of them
17 are negative; they are not positive.

18 MR. SCARPA: And just to lay a
19 background, I have been a real estate broker in New
20 Jersey for 37 years. And we have something called
21 disclosure. And you do, too, down here.

22 When you go to sell your house, you
23 are going to have to disclose the fact that you have
24 an environmental situation or potential issue near

1 your property. Because if you don't, you sell it,
2 and somebody later finds out about it, they can end
3 up suing you, just like we can all sue our builders
4 and we can sue, you know, our realtors who failed to
5 disclose this information to us also. So just keep
6 that thought in mind, as well.

7 I can tell you this will not end
8 here. So if we get turned down and this gets
9 approved, we intend to appeal it.

10 (Applause)

11 MR. HAYNES: Anybody else want to
12 make comments? Yes, sir?

13 UNIDENTIFIED SPEAKER: I have a
14 question about --

15 MR. HAYNES: Sorry, ma'am. I'm
16 sorry.

17 UNIDENTIFIED SPEAKER: That's fine.
18 I have a question about the comment about certain
19 plants or crops being planted that they would work
20 with local farmers so that the plants or crops would
21 soak up the nutrients or pollution.

22 Are they different than soybean and
23 corn, or are they going to be telling farmers you
24 have to plant this, it's not, you know, a market

1 competitive product; or I don't understand that
2 statement about working with farmers to plant
3 certain crops.

4 THE REPORTER: Bob, can we get a
5 name, or do you want unidentified speaker?

6 MR. HAYNES: What's your name?

7 MS. SPRINGFIELD: My name is Susan
8 Springfield of Milton.

9 MR. HAYNES: Thank you.

10 DR. HAYES: The crops are, as you
11 mentioned, corn, wheat, soybean, all the normal
12 aggregate crops that are grown by farmers. They
13 uptake nitrogen and phosphorous, as I mentioned in
14 my presentation, my statement.

15 That's all I was addressing was
16 that's the uptake that they take up.

17 The pollution will be taken care of
18 at the treatment plant, so . . .

19 (Loud laughter in public)

20 MS. PAYAN: You know what? Do we
21 have -- do we have like two more minutes that I can
22 just add a little bit?

23 MR. HAYNES: Sure.

24 MS. PAYAN: You know, every

1 community, since they have come here, has called on
2 us. And the history has not been good.

3 In 2013 they were trying to go onto
4 the Indian River. I don't know if you guys remember
5 back to that one. Then it got to the EPA in that.
6 Because DNREC was trying to transfer an expired
7 permit that was the wrong permit. It wasn't even a
8 meat processing permit; it was a Vlasic -- it was a
9 pickling permit.

10 And I had to go to EPA and say, "Hey,
11 here is what's happening. You know, they are not
12 allowed to do that, are they?"

13 So there hasn't been a lot of
14 confidence in Harim or the agency.

15 When it was the permitting here at
16 Harbeson, we all went there. In fact, I handed some
17 of this stuff in to you. We still have the charts
18 with the TMDLs, with the phosphorous, the nitrogen.

19 And we fought that permit, and we
20 said please don't issue it and don't put the cart
21 before the horse, because the system is not going to
22 be able to handle it. Make them do the upgrades
23 first before then.

24 And they went ahead and issued it.

1 And what happened? The soundproof system that we
2 always have, violations right away immediately.

3 Now, anybody is going to tell you it
4 doesn't smell. I know people sitting in the room
5 right here that live where the domestic waste is
6 going to be transferred to their community called me
7 too, because they didn't want that, but they didn't
8 have a choice because it wasn't a permit. But does
9 it stink there?

10 UNIDENTIFIED SPEAKER: Yes!

11 MS. PAYAN: You know what? Drive
12 down the road, because there's signs, as a matter of
13 fact, for air violations. They had over, what, 150
14 people call or something? There was an air
15 violation.

16 There is signs saying, "If you smell
17 it near the chicken plant, call DNREC" with the
18 number. I've got them posted on -- you know, it's
19 craziness.

20 So I have some hope now, because I
21 believe that -- and I'm hoping that Mr. Gavin -- I
22 have of a lot of respect for him. He is a Delaware
23 guy. And I'm hoping that this nonsense stops here
24 and we get this under control.

1 Because we are tired of hearing
2 everything is going to be okay, and it never is.

3 The people that lived near the
4 Harbeson plant, they have been told for years --
5 every single operator that's been going in there for
6 years; that plant has been around every year --
7 everything is going to be okay, everything is going
8 to be okay. None of them are okay, ever.

9 Mr. Lawson told me that. The
10 neighbors that live next door were telling me that.
11 It still stinks. I just sent them an email and said
12 hey, do you know you're getting a 4-million-gallon
13 lagoon that doesn't need treatment on the layout? I
14 saw it in the permit? Did anybody even put a permit
15 out for the 4-million-gallon lagoon over there?

16 DR. HAYES: Where?

17 MS. PAYAN: At the Harbeson plant?
18 It's in the documentation. Does anybody even know
19 about it?

20 DR. HAYES: It's a 10 million-gallon
21 lagoon, so --

22 MS. PAYAN: No. No, no, no.

23 DR. HAYES: I don't know what you're
24 talking about.

1 MS. PAYAN: There is a
2 4-million-gallon lagoon in the permit material
3 that's supposed to be being built at the Harbeson
4 plant.

5 DR. HAYES: There's already one to be
6 used for that permit.

7 MS. PAYAN: Well, then let's to say
8 that they are going to build a 4 million-gallon one.
9 See, this is nonsense.

10 DR. HAYES: I am not the permitting
11 (inaudible) I'm not --

12 MS. PAYAN: Yeah, that's the one with
13 the liner and all the trees growing out of it. That
14 one? I have got pictures of it! (Applause)

15 MR. HAYNES: Anybody else like to
16 make a statement?

17 MR. REID: Can I ask a question? So
18 does this spray on the fields happen 24/7 like the
19 stuff that comes out of the plant 24/7, year round,
20 whether there is a prop there or not?

21 THE REPORTER: Can you say your name
22 again, please?

23 MR. REID: Paul Reid.

24 THE REPORTER: Thank you.

1 DR. HAYES: It's seasonal.

2 MR. REID: It's seasonal. So it
3 buffers up in the lagoon? That's the reason for the
4 lagoon, the buffer?

5 (Many people in the public began talking
6 at the same time, making any one conversation
7 incomprehensible to the reporter.)

8 UNIDENTIFIED SPEAKER: What does
9 seasonal mean?

10 DR. HAYES: When the crops are
11 growing, sir, not during the wintertime.

12 MR. DAVIS: So it's a 45-day buffer
13 storage when they can't spray because there is no
14 crop and it's frozen, the ground is frozen? What
15 happens then?

16 DR. HAYES: If the ground is frozen
17 or saturated or --

18 MR. HAYNES: (cuts off Dr Hayes)
19 Yeah, the Department has regulations determining
20 when spray irrigation can occur, so.

21 MR. DAVIS: Is that self monitored by
22 Artesian, self monitoring or?

23 DR. HAYES: We monitor, as well.
24 They submit reports monthly to us.

1 UNIDENTIFIED SPEAKER: We can't hear
2 you.

3 MR. HAYNES: All right. We can't get
4 this into an open dialogue, because the court
5 reporter can't deal with that.

6 So if you want to make a statement,
7 please come up.

8 The public comments period is open.
9 We will be posting the public comments we got in
10 writing on the web page.

11 And, with that, I thank you all for
12 coming and accommodating the move of the hearing
13 room and making phone calls that made it happen. So
14 whoever did that, thank you. Sir?

15 MR. GRASS: Al Grass, and I live in
16 Sunland Ranch. Ingram Branch stream is right behind
17 our development. It empties into Waffle's Pond.
18 Waffle's Pond goes right into the Broadkill. So the
19 Broadkill is going wind up just like Beaver Dam
20 Creek. I don't think so.

21 (Applause)

22 MR. SCARPA: Anthony Scarpa. I just
23 want to make one more comment about the
24 90-million-gallon storage lagoon. If anyone has

1 seen the specs on this lagoon, it's only 4 feet --
2 the elevation of the lagoon is only 4 feet above the
3 high seasonal water table.

4 So the bottom of the lagoon is going
5 to be lined with a 45-mill liner which isn't
6 adequate. It should be a 60-mill liner. That's
7 what they use in all industrial dump sites. It's
8 not -- for a lagoon this size, a 45-mill liner isn't
9 really going to be adequate.

10 And that's where we should have an
11 independent engineer come and look at these
12 specifications.

13 By the way, as you are driving down
14 Route 30, you are going to notice that this lagoon
15 is right on the road, and it's 14 feet above grade.
16 So you are going to be riding by, and you are going
17 to be looking at a one-story building, basically.

18 It's an earth and dam lagoon. And it
19 has this liner. It has aerators in it. It has an
20 inlet pipe that comes out of the street where all
21 this sewage is going to be pumped up into the
22 lagoon. It's going to go into the inlet pipe. And
23 the pipe is only -- the pipe from Allen-Harim is
24 only 4 feet underground all the way up.

1 So if that pipe breaks -- and, by the
2 way, the seals between the pieces of pipe are just
3 pushed-on gaskets. That's it.

4 I mean, if you look at the
5 specifications on how this thing is built, we are
6 really surprised they apply for permits. Two are
7 still -- have not been granted yet. They are
8 pending at DNREC. One permit has been granted, the
9 first permit coming out of the Allen-Harim plant.

10 And the reason they are putting this
11 in now is because Delaware Department of
12 Transportation is doing upgrades on the highways.
13 And we want to make sure that they get it in. And
14 they are calling it for a future use. So thank you.

15 (Applause)

16 MR. HAYNES: Again, thank you. And,
17 as I say, I handed out some papers about what the
18 procedure is after this. Basically, when we get the
19 transcripts, we review the transcripts. We begin
20 our investigations. I ask the assistance from the
21 Groundwater Discharge Section and prepare an
22 analysis in response to public comments.

23 And that recommendation, I get it
24 together, the rest of the records for the Secretary,

1 prepare a report for him, and send it up to him.

2 And he makes the final decision.

3 Time wise, I don't predict what the
4 time will be for that whole process. I know the
5 court reporter is under contract to get me something
6 in two weeks, so she will have that done. And after
7 that, it could be several months. Thank you all for
8 coming.

9 (Concluded at 7:27 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 CERTIFICATE

2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the foregoing is an accurate and complete
5 transcription of the proceeding held at the time and
6 place stated herein, and that the said proceeding
7 was recorded by me and then reduced to typewriting
8 under my direction, and constitutes a true record of
9 the testimony given by said witnesses.

10 I further certify that I am not a relative,
11 employee, or attorney of any of the parties or a
12 relative or employee of either counsel, and that I
13 am in no way interested directly or indirectly in
14 this action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 4th day
17 of August 2017.

18

19

20

21

22

23

24

Lorena J. Hartnett
Registered Professional Reporter